

**Comments to the Federal Trade Commission
From the National Consumers League
Regarding the Business Opportunity Rule, R511993
June 15, 2006**

Introduction

The National Consumers League (NCL) welcomes the proposal by the Federal Trade Commission (FTC) to promulgate a trade regulation rule (hereafter referred to as the Rule) that will encompass business opportunities and work-at-home schemes. Established in 1899, NCL's mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. NCL hears directly from consumers about fraudulent and deceptive business opportunities and work-at-home schemes through its National Fraud Information Center/Internet Fraud Watch (NFIC/IFW). This hotline was originally created in 1992 to provide advice to consumers about telemarketing fraud and transmit reports about suspected scams the appropriate law enforcement agencies, including the FTC. In 1996, NCL extended these services to cover Internet fraud and launched the www.fraud.org Web site.

The Need for a New Rule

Work-at-home plans consistently rank among the top telemarketing and Internet scams reported to the NFIC/IFW. In the first three months of 2006, they were the 8th most commonly reported telemarketing frauds and the 10th most commonly reported Internet frauds. Business opportunities/franchises ranked as the 11th most commonly reported scams in both telemarketing and Internet fraud. However a review of the complaints in that category reveals that virtually all involve business opportunities, not franchises.

There are many similarities between complaints about work-at-home plans and business opportunities. Both typically include: unsubstantiated promises of large profits; misrepresentations about the nature of the products or services involved; false claims about the assistance that will be provided; phony testimonials and endorsements; misrepresentations about the costs and efforts that will be required; and empty money-back guarantees.

The main difference is the scale of loss. Fraudulent and deceptive business opportunities cost victims more than work-at-home plans. In the first three months of 2006, the average loss reported to the NFIC in connection with business opportunities promoted by telemarketing was \$7,213, compared to \$660 for work-at-home plans; the average loss reported for business opportunities promoted online was \$2,880, compared to \$39 for work-at-home plans. However, for many work-at-home victims, even losses of less than \$100 can have significant impacts. Some mention living on fixed disability or retirement incomes, others are desperately trying to supplement their wages in order to make ends meet.

NCL generally distinguishes complaints about work-at-home plans from those concerning business opportunities based on whether the consumer will supposedly perform work for the seller, such as stuffing envelopes or fabricating jewelry (work-at-home) or conduct his or her own business, such as operating vending machines or providing medical billing services to doctors (business opportunities). There is inevitably some overlap between the two categories, an indication of how similar they are. Complaints about multilevel marketing/pyramids are recorded in a third category. In the first three months of 2006, they ranked at #24 for telemarketing and #20 for Internet frauds. Those complaints share many of the characteristics that we have cited for deceptive and fraudulent business opportunities and work-at-home plans.

The FTC has noted that many business opportunities, multilevel marketing plans, and work-at-home plans do not currently fall squarely under the Franchise Rule, yet they generate far more complaints than franchises. NCL agrees that franchises are fairly distinct from these other money-making schemes in the degree to which they are governed by detailed contractual obligations on the part of the buyer and subject to ongoing monitoring, involvement and control by the seller. NCL believes that consumers would be best served by creating a new Rule for business opportunities, multilevel marketing plans and work-at-home plans that takes into account how they operate and focuses on the specific problems that need to be addressed.

Comments on Proposed Rule

NCL is pleased with the approach that the FTC has taken in the proposed Rule based on the agency's extensive enforcement experience. Input from other law enforcement agencies that have been active in this area, such as state attorneys general, and from legitimate businesses that may be covered is essential in fashioning a Rule that will provide effective protection and remedies for consumers. NCL will review the comments of others with interest and may file rebuttal comments at the appropriate time. At this point, NCL will offer general comments about some provisions of the proposed Rule.

Monetary Threshold

As the FTC has observed, fraudulent operators often set their prices below whatever monetary thresholds would bring them under specific laws or regulations. Furthermore, losing even a modest amount of money can have a significant impact on some consumers.

NCL sees no compelling reason to set a minimum payment amount for compliance with the Rule. Even low-cost work-at-home plans are advertised widely. NCL believes that the companies that advertise money-making opportunities should not find it overly burdensome to provide the disclosures that the Rule would require.

Timing

The standard educational advice to consumers is “Do your homework,” but they are often rushed or pressured into make decisions. They need time to check the company, the opportunity it is offering, and the references it provides. Whether this is a period of time before payment is made, or a cooling-off period after payment is made during which the agreement is held in suspension, there should be a reasonable number of days after receiving the required disclosures before consumers are locked into the deal.

Disclosure Document

NCL believes that the standardized disclosure document will be helpful to both legitimate companies and consumers. The “Yes” or “No” format will eliminate confusion and ambiguity. If sellers are required to provide the contact information for references, the disclosure document should include a notice to the buyer that his or her contact information may be provided to prospective purchasers.

Conclusion

NCL applauds the FTC for moving forward on a Rule that will offer more effective protection and remedies for consumers. We appreciate the opportunity to comment and will be happy to provide any additional information that might be useful.

Respectfully submitted by:

Susan Grant
Vice President, Public Policy
National Consumers League